

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 1809 of 2017**

Ms. Anjali B. Londhe	Petitioner
versus	
The State of Maharashtra and anr.	Respondents

Mr. Ranjeet Patil, advocate for the petitioner.
Mr. K. V. Saste, APP for the State.
Mr. P. G. Sarda, advocate for the respondent No.2.

**CORAM : RANJIT MORE &
SMT. BHARATI H. DANGRE, JJ.**

DATE : 19th JUNE, 2019.

P. C. :

Mr. Patil, learned counsel for the petitioner, seeks leave to amend the petition so as to give the particulars of the criminal case. Leave as prayed for, is granted. Necessary amendment be carried out forthwith.

2. Heard learned counsel and learned APP appearing for the respective parties.

3. The complainant herself has approached this Court invoking jurisdiction under Article 226 of the Constitution of India and Section 482 of the Code of Criminal Procedure, 1973, for quashing and setting aside the proceedings of the Session's Case No.281 of 2016 pending on the file of learned Session's Court at Dindoshi, Mumbai. The said case arises out of registration of FIR bearing C.R.. No. 505 of 2015 registered with Goregaon Police Station, at the instance of the petitioner against the respondent No.2

for the offences punishable under sections 313, 376, 420, 323 and 506 of the Indian Penal Code, 1860 (for short “the IPC”).

4. In paragraph 5 of the petition, the petitioner has made an averment that subsequent to the registration of the subject FIR, she realised that the entire episode of filing complaint against the respondent No.2 has occurred due to misunderstanding between them and, therefore, voluntarily she expressed her desire to put an end to the dispute to restore peace in life. She has further stated that she has now decided to pursue her further education from an University in United Kingdom and is willing to start her life afresh. The petitioner has also filed an additional affidavit dated 19th June, 2019. In paragraph 2, thereof, she has stated she has performed marriage on 19th June, 2017 and she is residing at her matrimonial home happily. In paragraph 3, she has stated that the respondent No.2 has also married and that she has no grievance against him. She has further stated that because of the pendency of the Session’s case, her married life is getting disturbed and for betterment of her future married life, she does not want to continue with the subject Session’s case. The petitioner is personally present before the Court. On specific query made by us, she submitted that she has gone through the petition and the affidavit as well and has fully understood the contents thereof. She further submitted that she has approached this Court on her own free will and without there being any pressure or undue influence. She has further confirmed that she has no objection for quashing the criminal proceedings initiated by her against the respondent No.2 for the offence punishable under Section 376 of the IPC.

5. It is true that the offence under Section 376 of IPC is of serious nature and is an offence against the society. Consequently, such an offence cannot be quashed by consent. Nonetheless, it would be advantageous to refer to Paragraph 28 of **Narinder Singh vs. State of Punjab [2014 AIR SCW 2065]**, wherein the Apex Court has held as under :

“28. Having said so, we would hasten to add that though it is a serious offence as the accused person(s) attempted to take the life of another person/victim, at the same time the court cannot be oblivious to hard realities that many times whenever there is a quarrel between the parties leading to physical commotion and sustaining of injury by either or both the parties, there is a tendency to give it a slant of an offence under Section 307 IPC as well. Therefore, only because FIR/ Charge-sheet incorporates the provision of Section 307 IPC would not, by itself, be a ground to reject the petition under section 482 of the Code and refuse to accept the settlement between the parties. We are, therefore, of the opinion that while taking a call as to whether compromise in such cases should be effected or not, the High Court should go by the nature of injury sustained, the portion of the bodies where the injuries were inflicted (namely whether injuries are caused at the vital/delicate parts of the body) and the nature of weapons used etc. On that basis, if it is found that there is a strong possibility of proving the charge under Section 307 IPC, once the evidence to that effect is led and injuries proved, the Court should not accept settlement between the parties. On the other hand, on the basis of prima facie assessment of the aforesaid circumstances, if the High Court forms an opinion that provisions of Section 307 IPC were unnecessary included in the charge sheet, the Court can accept the plea of compounding of the offence based on settlement between the parties.”

The decision of the Apex Court, thus, makes it clear that the Court cannot decline to quash the FIR merely because the FIR incorporates a particular provision which is a serious offence or an offence against the society. The Court has to endeavour to find out whether the FIR indeed

discloses ingredients of such offence and that the Court can accept the settlement and quash the FIR / Charge-sheet, if the Court is of the opinion that such an offence is unnecessarily incorporated in the charge-sheet.

6. So far as the instant case is concerned, we have gone through the FIR. The reading of the FIR makes it abundantly clear that both the petitioner and respondent No.2 were adults and their relationship was consensual. We are, therefore, of the opinion that the offence under Section 376 is not made out. Consequently, no fruitful purpose will be served by continuing with the prosecution.

7. In these circumstances, and especially, in view of the law laid down by the Apex Court in the case of **Madan Mohan Abbot vs. State of Punjab, [(2008) 4 SCC 582]**, we find that no purpose would be served by keeping the subject criminal case pending except ultimately burdening the Criminal Courts which are already overburdened.

8. In the light of the principles laid down by the Apex Court in the aforesaid decision as well as in the case of **Narinder Singh vs. State of Punjab [2014 AIR SCW 2065]**, we are of the considered view that there is no impediment in quashing the proceedings of the subject Session's case. Accordingly, the writ petition is made absolute in terms of prayer clause (b) and the petition is disposed as such.

[SMT. BHARATI H. DANGRE, J.]

[RANJIT MORE, J.]